

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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ART WALTERS,

Plaintiff,

v.

CITY OF LAS VEGAS, *et. al.*,

Defendants.

2:10-cv-01357-GMN-LRL

**O R D E R and RECOMMENDATION**

Plaintiff has submitted an Application to Proceed *In Forma Pauperis* and a Complaint (#1) pursuant to 42 U.S.C. § 1983. Plaintiff's Application is incomplete. Further, for the reasons set forth below, the court recommends that the Complaint be dismissed with prejudice as irrational and frivolous.

**I. *In Forma Pauperis* Application**

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a). Plaintiff indicates that he receives income from several sources but fails to describe the source and amount of income received each month where asked to do so on the form. Nor has plaintiff listed his expenses or whether he supports any dependents. Title 28, United States Code, Section 1915(a)(1) allows the court to authorize the commencement of a civil action "without prepayment of fees or security therefor, by a person who submits an affidavit that . . . the person is unable to pay such fees or give security therefor." The decision to grant or deny in forma pauperis status under § 1915 lies within the sound discretion of the court. *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963). Based on the deficient information provided by plaintiff, this court is unable to determine whether he has sufficient financial resources to pay the court's filing fee.

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## II. Screening the Complaint

Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. § 1915(e)(2). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009) (internal quotations and citation omitted). In considering whether the plaintiff has stated a claim upon which relief can be granted, all material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation omitted).

Plaintiff has submitted a Complaint pursuant to 42 U.S.C. § 1983 using the court’s civil rights complaint form. In the spaces provided to state the Nature of the Case and counts I - III, plaintiff directs the court to a typed statement provided by him. Plaintiff’s typed statement, though styled as a Complaint, is incomprehensible as such. The Statement contains a Section 1 and Section 2. Under Section 1, plaintiff has typed, among other things, “The Following Crimes, Were, Committed Between 0230-0355 Hours, 10 August 2010; a. ASSAULT [Loud Yelling, Ordering the Undersigned To: “Leave Premises”] “TAPED” 911 call, Placed, From Cellular, 609-225-0848; Misrouted, Twice, By, Tower, Two [2] Emergency Operators Refused, To, Dispatch, An Officer, To, The Premises, Monte Carlo, Las Vegas Boulevard], b. STALKING “Security Guards, Following Down Said Sidewalk, Refusing, To, End Pursuit.” He states in Section 1(c), “Damages: Fear, And, Dread, 10, 000, 000, 000, 000 . 00 . No Use, Of, Any Alternative Orders...”. Under Section 2, plaintiff states, “No Other Counsel [Misrepresentation : Norris Gelman], (b) No Claims [Except The Department, Of, Commerce, For, The Undersigned, With, European Union. Neil Young, An “Union”, Are, “Declined”].” He then lists many

1 names, including Michelle and Barak Obama, Harry Reid, Antonin Scalia, Jessie Jackson, and Joe  
2 Biden to name but a few. Plaintiff closes the statement by signing his name under "FOR THE CHIEF  
3 EXECUTIVES [George W. Bush, George Bush, And, Lyndon Johnson].

4 Plaintiff has not provided sufficient legal or factual grounds to support a § 1983 claim. He has  
5 not alleged that his civil rights were violated, nor can his typed statement be reasonably construed to  
6 state any specific allegation against a defendant. The court further finds plaintiff's statements to be  
7 irrational and frivolous, and will therefore recommend that the Complaint be dismissed.

8 Accordingly, and for good cause shown,

9 IT IS ORDERED that plaintiff's Application to Proceed *In Forma Pauperis* (#1) is DENIED  
10 without prejudice.

11 IT IS FURTHER ORDERED that the Clerk of Court shall send plaintiff an Application to  
12 Proceed *In Forma Pauperis* (Non-Prisoner), Form AO 240.

13 IT IS FURTHER ORDERED that plaintiff shall either submit a completed application in support  
14 of his request to proceed in forma pauperis on the form provided by the Clerk of the Court, or pay the  
15 appropriate filing fee of \$350 no later than November 15, 2010.

16 IT IS ALSO RECOMMENDED that the Complaint be dismissed with prejudice as irrational  
17 and frivolous.

18 DATED this 18th day of October, 2010.

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21 **LAWRENCE R. LEAVITT**  
22 **UNITED STATES MAGISTRATE JUDGE**  
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